CIVIL WRIT JURISDICTION CASE No.3348 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India.

ASHOK KUMAR TRIVEDI, General Secretary of Bihar Provincial P.W.D.Workers Union, Annie Besant Road, Patna -4.

---------- Petitioner

Versus

STATE OF BIHAR through its Chief Secretary, Old Secretariat, Patna.

---------- Respondent

For the petitioner: M/s. K N Choubey, Sr. Advocate.
For the State : M/S. Anil Kumar Jha,G. A. 2 and Uday Bhan Singh, JC to G A 2.

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A K Tripathi, J. I.A. No. 3377 of 2007 has been filed for substituting the name of Ashok Kumar Trivedi, the then General Secretary of the Union who died. The present General Secretary who is to be brought on record is Trivedi Ambareesh.

2. Interlocutory application is allowed.

3. Petitioner, a Trade Union of so-called Provincial P.W.D. Workers' Union has filed the present writ application to enforce their constitutional and legal right which, according to the petitioner, has emerged from a so-called agreement entered between the Chief Secretary, Government of Bihar and the employees' union which are contained in anneure-2 and 4 dated 12.2.1987 and 27.9.1989 respectively. The enforcement of this 'agreement' is sought through

the Court under Article 226 of the Constitution of India.

4. Many an issue had been agitating the members of the trade union and when it went unheard they gave a charter of demands and a strike notice on 1.1.1987. This was under the provision of Industrial Disputes Act as per averment in the writ and would be evident from annexure-1 to the writ application. When the notice did not beget any result the employees went on strike from 20.1.1987. A conciliation proceeding was held with the Chief Secretary on the part of the government and the employees' representative from the union. A kind of ironing out of the differences on some of the issues was done and was recorded as would be evident from a perusal of annexure-2. Thereafter, since no follow-up action was taken up by the State, some more pressure was brought upon the government and further negotiation was entered into due to threat of another strike notice given by the petitioner's union. The strike notice is annexed as annexure-3. It is stated that after a long negotiation yet another agreement was reached on 27.9.1989 which is annexure-4 to the writ application. But when nothing emerged out from the same, the petitioner body decided to file the present writ application.

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5. From the tenor and submission made at the bar by the learned senior counsel appearing on behalf of the petitioner, it is obvious that nothing has been done with regard to the matter right from the year 1989. Governments have come and Governments have gone but no decision with regard to the so-called agreed issues ever came to be implemented. Therefore, they want a mandamus upon the

respondent State to enforce the so-called agreements between the State and the union. Submission of the learned senior counsel is that these are public orders publicly made and therefore are enforceable under the Constitution as a way of right created in favour of the petitioner and a duty cast upon the public body.

6. From the perusal of the averment and assertion made in the writ application the negotiation and the cause of action is basically arisen within the frame-work of the Industrial Disputes Act. If the petitioner did not choose to enforce their right under the special act and statute then this Court will not fill up the gap specially under Article 226 of the Constitution of India to enforce a so-called agreement arrived at between the parties whose legal status is not even certified or qualified.

7. The writ application is totally misconceived and misdirected. It is dismissed as such.

(Ajay Kumar Tripathi, J)

Patna High Court;
The 26th November, 2008.
(NAFR) RKPathak.

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